

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DEWAYNE ANDERSON	§	
v.	§	CIVIL ACTION NO. 6:09cv282
J.B. McCALEB, ET AL.	§	

MEMORANDUM OPINION AND ORDER OF DISMISSAL

This lawsuit was called for jury selection on December 3, 2012. After the jury had been selected and dismissed for the day, pending the resumption of trial the following day, the Plaintiff Dewayne Anderson moved to dismiss his lawsuit. The Court discussed with Anderson the ramifications of this dismissal, including the fact that he would not be able to bring his claims again, and Anderson maintained that he wished to dismiss the case.

Rule 41(a), Fed. R. Civ. P., permits plaintiffs to dismiss their actions without need for leave of court by either filing a notice of dismissal prior to service of a responsive pleading or by filing a stipulation of dismissal signed by all parties. Rule 41(a)(2), Fed. R. Civ. P., states that except as provided in Rule 41(a)(1), an action shall not be dismissed at the plaintiff's instance except upon order of court and upon such terms as the court deems proper.

In this case, Anderson voluntarily moved to dismiss his case after jury selection, and the Court informed him that such a dismissal would prevent him from bringing his claims again. The Court has determined that Anderson's motion is meritorious and should be granted. It is accordingly

ORDERED that the Plaintiff's oral motion to dismiss, made in open court after jury selection, is GRANTED. The above-styled civil action be and hereby is DISMISSED with prejudice (i.e. not to be filed again) on the motion of the Plaintiff. Rule 41(a), Fed. R. Civ. P. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 4th day of December, 2012.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE